

Melanie Gray (*admitted pro hac vice*)
Lydia Protopapas (LP 8089)
Jason W. Billeck (*admitted pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1600
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

James J. Dragna (*admitted pro hac vice*)
BINGHAM MCCUTCHEN LLP
355 South Grand Avenue, Suite 4400
Los Angeles, California 90071
Telephone: (213) 680-6400
Facsimile: (213) 680-6499

Richard A. Rothman (RR 0507)
Bruce S. Meyer (BM 3506)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Thomas R. Lotterman (*admitted pro hac vice*)
Duke K. McCall, III (*admitted pro hac vice*)
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
Telephone: (202) 373-6000
Facsimile: (202) 373-6001

Counsel to Defendants

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re) Chapter 11
TRONOX INCORPORATED, <i>et al.</i> ,) Case No. 09-10156 (ALG)
<u>Debtors.</u>) Jointly Administered
TRONOX INCORPORATED, TRONOX)
WORLDWIDE LLC f/k/a Kerr-McGee)
Chemical Worldwide LLC, and TRONOX LLC)
f/k/a Kerr-McGee Chemical LLC,)
<u>Plaintiffs,</u>)
v.) Adv. Pro. No. 09-01198 (ALG)
ANADARKO PETROLEUM CORPORATION)
and KERR-MCGEE CORPORATION, KERR-)
MCGEE OIL & GAS CORPORATION, KERR-)
MCGEE WORLDWIDE CORPORATION, KERR-)
MCGEE INVESTMENT CORPORATION, KERR-)
MCGEE CREDIT LLC, KERR-MCGEE SHARED)
SERVICES COMPANY LLC, and KERR-MCGEE)
STORED POWER COMPANY LLC)
<u>Defendants.</u>)

THE UNITED STATES OF AMERICA,)
))
Plaintiff-Intervenor,))
v.))
TRONOX, INC., TRONOX WORLDWIDE LLC,))
TRONOX LLC, KERR-MCGEE CORPORATION))
and ANADARKO PETROLEUM))
CORPORATION,))
))
Defendants.)

**DEFENDANTS' EX PARTE MOTION TO FILE PARTIALLY UNDER SEAL
THEIR (I) RESPONSE TO (A) PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
JUDGMENT, (B) THE UNITED STATES' JOINDER AND (C) STATEMENTS
IN SUPPORT OF PLAINTIFFS' MOTION AND (II) CROSS-MOTION FOR
PARTIAL SUMMARY JUDGMENT AND EXHIBITS ATTACHED THERETO**

TO THE HONORABLE ALLAN L. GROPPER,
UNITED STATES BANKRUPTCY JUDGE:

Anadarko Petroleum Corporation, Kerr-McGee Corporation, Kerr-McGee Oil & Gas Corporation, Kerr-McGee Worldwide Corporation, Kerr-McGee Investment Corporation, Kerr-McGee Credit LLC, Kerr-McGee Shared Services Company LLC, and Kerr-McGee Stored Power Company LLC (collectively, the "Defendants"), Defendants in the above-captioned Adversary Proceeding, hereby file this *ex parte* motion (the "Motion To Seal") seeking authority to file partially under seal their (I) Response to (A) Plaintiffs' Motion for Partial Summary Judgment Regarding Plaintiffs' Recovery Under Section 550(a) of the Bankruptcy Code (the "Motion"), (B) Joinder of the United States of America in the Litigation Trust's Motion for Partial Summary Judgment Regarding the Litigation Trust's Recovery Under Section 550(a) of the Bankruptcy Code (the "Joinder"), (C) Statement of the State of Nevada in Support of the Litigation Trust's Motion for Partial Summary Judgment Regarding the Litigation Trust's Recovery under § 550(a) of the Bankruptcy Code (the "Nevada Statement"), (D) Statement in Support of the Litigation Trust's Motion for Partial Summary Judgment and United States' Joinder in Motion (the "Other States' Statement"), and (E) Statement of the Tronox Incorporated Tort Claims Trust in Support of the Anadarko Litigation Trust's Motion for Partial Summary Judgment Regarding the Litigation Trust's Recovery Under Section 550(a) of the Bankruptcy Code (the "Tort Statement"); and (II) Cross-Motion for Partial Summary Judgment Limiting Plaintiffs' Potential Damage

Award Pursuant to Sections 544, 548 and 550(a) of the Bankruptcy Code, including any exhibits attached thereto (collectively, the "Response and Cross-Motion"), and respectfully represent as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this Motion To Seal pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. Pursuant to this Court's order, dated March 16, 2009 (as amended, the "First Protective Order"),¹ any party participating in discovery in the adversary proceeding styled *Tronox Inc. et al. v. Anadarko Petroleum Corp., et al.* (Adversary Proceeding No. 09-01198) (the "Adversary Proceeding") may designate discovery materials as "Confidential" or "Confidential Outside Counsel's Eyes Only" (collectively, the "Confidential Discovery Materials").² In the event that a party elects to file or submit to this Court any papers containing confidential information derived from Confidential Discovery Materials, the First Protective Order requires the party to file such papers under seal.³ Sealed papers may be released from seal "only as provided by agreement of the undersigned parties [to the First Protective Order] or order of the Court."⁴

3. On December 23, 2010, the First Protective Order was amended by the Second Agreed Protective Order (together with the First Protective Order, the "Protective Orders").⁵ Materials deemed confidential by the First Protective Order are also deemed confidential under the Second Agreed Protective Order.

¹ Main Case Dkt. No. 248.

² *Id.* at ¶¶ 1-2.

³ *Id.* at ¶ 17.

⁴ *Id.*

⁵ Main Case Dkt. No 2626.

4. On August 31, 2011, the Anadarko Litigation Trust, as successor to Tronox Incorporated, Tronox Worldwide LLC and Tronox LLC (collectively, the "Plaintiffs"), filed the Motion.⁶ On the same date, the United States of America filed the Joinder.⁷

5. On September 21, 2011, the State of Nevada filed the Nevada Statement.⁸

6. On September 22, 2011, the State of New York, on behalf of itself, multiple signatory States, other non-federal governmental entities and sovereign entities, filed the Other States' Statement.⁹

7. On September 26, 2011 the Tronox Incorporated Tort Claims Trust filed the Tort Statement.¹⁰

8. In response to the aforementioned pleadings, Defendants intend to file the Response and Cross-Motion, which includes as an exhibit Defendants' Statement of Undisputed Material Facts. The Response and Cross-Motion contain references to, and excerpts from, confidential information derived from Confidential Discovery Materials. Therefore, to comply with the terms of the Protective Orders, Defendants must file this Motion to Seal and seek the relief requested herein.

Relief Requested

9. Pursuant to section 107(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the Protective Orders, Defendants request the entry of an order, substantially in the form attached hereto as Exhibit A, (i) authorizing Defendants to file partially under seal the Response and Cross-Motion, including all exhibits attached thereto, and (ii) directing that the Response and Cross-Motion shall remain confidential and under seal and not be made available to any third party without the express consent of the applicable parties to the Protective Orders or by further order of this Court.

⁶ Dkt. Nos. 257 & 258.

⁷ Dkt. No. 259.

⁸ Dkt. No. 263.

⁹ Dkt. No. 264.

¹⁰ Dkt. No. 266.

Basis for Relief Requested

10. Section 107(b) of the Bankruptcy Code provides that a court shall protect entities from potential harm that may result from the disclosure of certain confidential information.¹¹ In addition, Bankruptcy Rule 9018 states, in part, that “on motion . . . the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . .”

11. The Protective Orders require Defendants to file pleadings containing confidential information derived from Confidential Discovery Materials under seal. Therefore, to comply with such orders, Defendants shall file an unredacted version of the Response and Cross-Motion under seal and serve it on the Court, counsel to the Anadarko Litigation Trust and the United States of America. Defendants shall also publicly file a partially redacted version of the Response and Cross-Motion.

Basis for *Ex Parte* Relief

12. Defendants have an immediate need to proceed on an *ex parte* basis as opposed to noticing a hearing on the Motion to Seal. Filing the Response and Cross-Motion partially under seal permits the Court to fully consider the evidence set forth in the Response and Cross-Motion before a hearing to consider the substantive issues discussed therein. No party-in-interest will be prejudiced by granting the relief requested herein because Defendants are serving an unredacted version of the Response and Cross-Motion on the parties to the Protective Order and publicly filing a partially redacted version. Accordingly, the relief requested in the Motion to Seal is warranted and should be granted.

No Previous Request

13. Defendants have not made a previous request for the relief requested herein before this or any other court.

¹¹ 11 U.S.C. § 107(b)(1) (“On request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information.”).

WHEREFORE, Defendants respectfully request that the Court grant the relief requested herein and such other relief as it deems just and proper.

Houston, Texas
Dated: September 30, 2011

Richard A. Rothman (RR 0507)
Bruce S. Meyer (BM 3506)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Thomas R. Lotterman (*admitted pro hac vice*)
Duke K. McCall, III (*admitted pro hac vice*)
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
Telephone: (202) 373-6000
Facsimile: (202) 373-6001

/s/ Lydia Protopapas
Melanie Gray (*admitted pro hac vice*)
Lydia Protopapas (LP 8089)
Jason W. Billeck (*admitted pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1600
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511

James J. Dragna (*admitted pro hac vice*)
BINGHAM MCCUTCHEN LLP
355 South Grand Avenue, Suite 4400
Los Angeles, California 90071
Telephone: (213) 680-6400
Facsimile: (213) 680-6499

Counsel to Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 30, 2011, a true and correct copy of the foregoing ***Defendants' Ex Parte Motion To File Partially Under Seal Their (I) Response To (A) Plaintiffs' Motion For Partial Summary Judgment, (B) The United States' Joinder And (C) Statements In Support Of Plaintiffs' Motion And (II) Defendants' Cross-Motion For Partial Summary Judgment And Exhibits Attached Thereto*** was served on the following counsel of record as indicated below.

Via email david.zott@kirkland.com

David J. Zott
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, Illinois 60654

*Via email jeffrey.zeiger@kirkland.com
and jzeiger@kirkland.com*

Jeffrey J. Zeiger
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, Illinois 60654

*Via email joseph.pantoja@usdoj.gov and
robert.yalen@usdoj.gov*

Joseph Pantoja
Robert Yalen
Assistant U.S. Attorney
SOUTHERN DISTRICT OF NEW YORK
86 Chambers Street
New York, New York 10007

Houston, Texas
Dated: September 30, 2011

/s/ Rene Olvera
Rene Olvera